

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 FLORENCE DIVISION

Danny Eugene Saunders,)	Case No.: 4:20-02864-JD-KDW
)	
Plaintiff,)	
)	
vs.)	
)	ORDER & OPINION
The City of Florence SC and Officer John)	
Davis,)	
)	
Defendants.)	
)	

This matter is before the Court with the Report and Recommendation of United States Magistrate Kaymani D. West (“Report and Recommendation” or “Report”), made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2) of the District of South Carolina.¹ Danny Eugene Saunders (“Saunders” or “Plaintiff”), proceeding *pro se* and *in forma pauperis*, filed this case against the City of Florence SC (“Defendant”) and Officer John Davis (“Davis”) pursuant to § 1983 for wrongful imprisonment and defamation of character seeking an award of \$50,000 and an expungement of all three charges.² Plaintiff alleges he was charged with a crime he did not commit; specifically, Plaintiff alleges he was charged with pointing and presenting a firearm and two counts of grand larceny and spent two months in jail. (DE 54, p. 1.) Further,

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The Court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

² The Report notes Davis was never properly served and made a party to this action as his summons was returned unexecuted because he was purportedly on military deployment for up to one year. (DE 54, p. 9, DE 28.) As the Report, which was filed on September 13, 2021, recommends dismissing Davis pursuant to Rule 4(m) Fed. R. Civ. P., the Court finds Plaintiff has sufficiently been put on notice of his failure to serve Davis. Accordingly, the Court dismisses Plaintiff’s claims against Davis without prejudice.

Plaintiff alleges that Davis charged him with the crimes, but Davis never investigated or spoke with Plaintiff, while Plaintiff was held on bond. (DE 54, p. 2.) Defendant has filed a Motion for Summary Judgment contending it should not be held vicariously liable for its employee's actions, and thus Plaintiff's claims must be dismissed. (DE 54, pp. 3, 4.) See Love-Lane v. Martin, 355 F.3d 766, 782 (4th Cir. 2004) (stating that ". . . there is no respondeat superior liability under § 1983"). Additionally, Defendant contends Plaintiff failed to plead or offer any evidence to show how a municipal policy or custom resulted in the alleged unlawful conduct. (DE 43-1, p. 6, DE 54, p. 3.) The Magistrate issued a Roseboro Order on March 3, 2021, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir.1975), advising Plaintiff of the motion and the possible consequences if he failed to respond adequately. (DE 44.) Plaintiff has filed a response to Defendant's Motion for Summary Judgment. The Report recommends granting Defendant's Motion for Summary Judgment and dismissing Plaintiff's Complaint because *inter alia* the Complaint provides insufficient factual allegations against Defendant to state a cognizable § 1983 claim. (DE 54, p. 9.)

Plaintiff has failed to file an objection to the Report and Recommendation. In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). The Court must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005). After a thorough review of the Report and Recommendation and the record in this case, the Court adopts the Report and Recommendation and incorporates it herein.

IT IS, THEREFORE, ORDERED that Defendant's Motion for Summary Judgment (DE 43) is granted, and Plaintiff's Complaint against both Davis and The City of Florence SC is dismissed. Further, the Court declines to rule on the remaining Motion (DE 57) as it is now moot.

AND IT IS SO ORDERED.



Joseph Dawson, III
United States District Judge

Greenville, South Carolina
November 2, 2021

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.